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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,660
DLG 02043

FILE: B-194970

DATE: July 3, 1979

MATTER OF: Manpower Temporary Services - Purchase
Orders for Typing Services

[Allowability of Payment of Vouchers For Typing Services]

DIGEST:

1. Contracting activity issued several purchase orders for typing services in interim between resignation of sole typist and hiring of replacement. Relationship created was tantamount to that of employer-employee and as such violated general rule that personal services should not be obtained on contractual basis. Vouchers for services received may be paid due to extenuating circumstances in this case.
2. Vouchers may be paid on basis of facsimile signature if use was authorized by person whose name was imprinted on voucher and agency procedures permit use of facsimile signature.

This decision is in response to a request dated May 22, 1978, from an authorized certifying officer of the Fish and Wildlife Service, United States Department of the Interior, for an advance decision as to the allowability of payment on claims made by Manpower Temporary Services (Manpower) totalling \$521.58 pursuant to purchase orders/vouchers Nos. SFWA 396112, SFWA 396115, and SFWA 422785. The claims were for typing services provided the Gainesville Field Station of the Fish and Wildlife Service during the period from March through June 1978, in connection with a project entitled, "An annotated bibliography of the fish and wildlife resources of Galveston Bay, Texas."

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The Acting Project Leader reports that the project had a deadline of July 10, 1978, for the first draft and amounted to approximately 500 pages of typing. The laboratory was without a typist during this critical period of time because the laboratory's sole typist had resigned and a replacement was not

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scheduled to begin employment until the second week of June 1978. The amount of work produced by researchers and related typing varied depending upon the difficulty experienced in collecting the necessary information. When a sufficient amount of typing was required, the Acting Project Leader would hire a full-time typist for such purpose from Manpower. According to the Acting Project Leader, it was impossible to accurately predict when the services of a typist would be required and, therefore, even an "emergency 30-day hire" could not be appointed, since such appointments require at least a 30-day lead time. It was imperative that all material be typed as soon as available since researchers would still have to proofread the material and inaccuracies would have to be corrected before the July 10 deadline.

The authorized certifying officer questions the propriety of the vouchers submitted for payment since the contracts were for personal services. The authorized certifying officer also questions the propriety of payment under two of the vouchers since the purchase orders bear only the rubber-stamped signature of the Chief, Gainesville Field Station. The authorized certifying officer questions whether vouchers not bearing original, hand-written signatures may properly be paid.

The general rule established by decisions of this Office and the Civil Service Commission (now the Office of Personnel Management) is that personal services may not be obtained on a contractual basis and must be performed by personnel employed in accordance with the civil service and classification laws. However, in prior cases where it was administratively determined by the Government agency involved that it would be substantially more economical, feasible, or necessary by reason of unusual circumstances to have the work performed by non-Government parties, and that was clearly demonstrable, we have not objected to the procurement of such work through proper contract arrangement. A "proper contract" for services under such language has been recognized to be one in which the relationship established between the Government and the contract personnel is not that of employer and employee. See 51 Comp. Gen. 561 (1972).

The basic issue is whether a contract creates what is tantamount to an employer-employee relationship between the Government and the employee of the contractor. The criteria by which this relationship is judged are those set forth in 5 U.S.C. § 2105(a) (1976), namely, as to whether an individual is:

1. appointed in the civil service by a Federal officer or employee;
2. engaged in the performance of a Federal function under authority of law or an executive act; and
3. subject to the supervision of a Federal officer or employee while engaged in the performance of the duties of his position.

In order to assist agencies to determine whether a contract establishes an employer-employee relationship, the Civil Service Commission has listed six elements. Those elements, which are set forth in Federal Personnel Manual Letters 300-8, dated December 12, 1967, and 300-12, dated August 20, 1968, are:

1. Performance on site.
2. Principal tools and equipment furnished by the Government.
3. Services are applied directly to integral efforts of agencies or an organizational subpart in furtherance of assigned function or mission.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
5. The need for the type of service provided can reasonably be expected to last beyond 1 year.

6. The inherent nature of the service, or the manner in which it is provided, requires directly or indirectly Government direction or supervision of contractor employees in order:

- a. To adequately protect the Government's interest, or
- b. To retain control of the function involved, or
- c. To retain full personal responsibility for the function supported in a duly authorized Federal official or employee.

The six elements relate principally to the third statutory criterion concerning supervision of the contractor's employee by a Federal officer or employee. That is, the proscribed supervision is frequently evidenced by these elements. The absence of any one or a number of them, however, would not mean that supervision is not permitted by the contract, or present in the actual work performance, but only that there is less likelihood of its existence. See Kelly Services, Inc., B-186700, January 19, 1977, 77-1 CPD 356.

In applying the above tests to this case, we find that many of the elements are present. While we recognize that there were no direct appointments by a Federal officer or employee, the existence of a right to supervise or actual supervision would be evidence that such appointments should have occurred. There is very little evidence regarding the amount of supervision the typists were actually given. However, the researchers directed the typists regarding corrections, consulted with typists when necessary, and there is no evidence in the record showing that the typists were not given directions and supervision by agency personnel. Further, the services were such as normally require the proscribed supervision, and the agency could have asked for replacements if any of the typists had been determined to be unsatisfactory. Accordingly, our view is that the relationships created here were tantamount to that of employer-employee.

In the present case, these specific vouchers may be certified for payment in view of the extenuating circumstances and because the Fish and Wildlife Service apparently believes the performance of the typists to have been satisfactory and the price for such services to have been reasonable. Kelly Services, Inc., supra. The question of the propriety of acceptance by the certifying officer of two purchase orders/vouchers which have only a facsimile signature of the officer authorized to procure the services in question is less clear.

As usually defined in agency directives, a facsimile signature is an impression of a signature made by a rubber stamp, metal plate, or other mechanical contrivance. 40 Comp. Gen. 5, 6 (1960).

The use of a facsimile device is not prohibited per se in any regulations, directives, or decisions of this Office. In fact, we noted in 33 Comp. Gen. 297 (1954) that a number of courts have recognized the validity of such signatures. See e.g., Tabas v. Emergency Fleet Corporation, 9 F. 2d 648 (1926) and Hill v. United States, 288 F. 192 (1923). However, as we pointed out in 33 Comp. Gen. 297, supra, in each instance, the signer of the invoice had adopted and expressly authorized the use of his signature.

In B-150395, December 21, 1962, we authorized a Navy Aviation Supply Office to adopt an automated purchase order system, including use of a facsimile signature plate. We based our decision, however, on our examination of a statement of procedures to be followed for the use and control of the signature plate, which was enclosed with the request for our approval. We concluded that the proposed procedures would adequately insure that the plate would not be used improperly.


In the instant case, we have no way of knowing whether the Chief, Gainesville Field Station authorized the use by the Acting Project Leader of a rubber stamp imprinting his signature, or, if he did, whether this practice is permitted by Department regulations. If

B-194970

6

the certifying officer obtains evidence and is satisfied on both these points, we would not object to payment of the vouchers solely because of the use of a facsimile signature.

Deputy


Comptroller General
of the United States